IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 9598 of 2000

Date of Decision : 30.8.2006.

Rakesh Kumar

....Petitioner

Versus

Central Administrative Tribunal, Chandigarh and others.

..Respondents

CORAM : HON'BLE MR. JUSTICE J.S.KHEHAR
HON'BLE MR. JUSTICE S.D. ANAND

Present : Mr. Sunil K. Chaudhary, Advocate,
for the petitioner.

Ms. Renu Bala Sharma, Central Government Standing Counsel,
for the respondents.

J.S.Khehar, J. (Oral)

The Central Poultry Breeding Farm, Chandigarh invited applications for appointment against one temporary post of Poultry Attendant from amongst physically handicapped candidates on 1.6.1998. Consequent upon the process of selection conducted by respondent Nos. 2 and 3, the petitioner – Rakesh Kumar came to be appointed against the aforesaid post of Poultry Attendant.

The selection and appointment of the petitioner against the post of Poultry Attendant was challenged by respondent No.4, who was also one of the candidates competing for the said post in furtherance of the aforesaid advertisement dated 1.6.1998, but had not been selected. The challenge at the hands of respondent No.4 to the selection and appointment of the petitioner was based on two pleas. Firstly, that the petitioner was ineligible

for selection and appointment to the post of Poultry Attendant in furtherance of the advertisement dated 1.6.1998. It was asserted on behalf of respondent No.4 that one of the pre-requisite qualifications for appointment against the post of Poultry Attendant was "experience of six months in a poultry farm". It was pointed out that the petitioner did not possess the aforesaid qualification and as such, could not be selected and appointed to the post of Poultry Attendant, advertised on 1.6.1998. Secondly, it was asserted by respondent No.4 that the petitioner cannot be treated as a handicapped candidate. In this behalf, reliance was placed by respondent No.4 on instructions issued by the Government of India, Department of Personnel & Training vide Office Memorandum No. 36035/5/88-Est.(SCT) dated 4.5.1990, under which a person could be treated as Orthopadically handicapped, only if the concerned person was ".... having minimum of 40% defect or deformity....". Based on the certificate relied upon by the petitioner himself to the effect that he had 18% handicapped, it was asserted that the selection and appointment of the petitioner as a handicapped candidate was in clear violation of the policy instructions issued by the Government of India.

The Original Application bearing No. 789-CH of 1998 filed by respondent No.4 was allowed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh on 4.5.2000, wherein both the pleas raised by respondent No.4 were accepted. Through, the instant writ petition filed by the petitioner, he has impugned the order passed by the Central Administrative Tribunal on 4.5.2000.

Insofar as the first issue is concerned, namely the ineligibility of the petitioner on account of the fact that he did not possess six months

experience in poultry farming stipulated in the advertisement dated 1.6.1998 for the appointment against the post of Poultry Attendant is concerned, the petitioner has invited our attention to an experience certificate placed on record of this case as Annexure P-6/T. The translated version of the aforesaid certificate relied upon by the petitioner is being extracted hereunder:-

> "Certified that Sh. Rakesh Kumar son of Shri Amar Nath, Village Bihru, Post Office Bihru, Tehsil Badsar, District Hamirpur has worked in Ajay Poultry Farm, Jamli w.e.f. 1.1.97 to 30.12.97 with devotion. He has knowledge about poultry.
>
> Gian Singh
>
> Ajay Poultry Farm
>
> Jamli, P.O. Lafran
>
> Dated: 1.1.98 Teh. Badsar, Distt. Hamirpur"

Based upon the aforesaid certificate, it is the vehement contention of the learned counsel for the petitioner, that the petitioner has wrongly been found to be ineligible for appointment to the post of Poultry Attendant. It is asserted, that the petitioner in fact possesses one year experience in Poultry Farming, and as such, ought not to have been declared ineligible for appointment to the post of Poultry Attendant.

Having examined the instant contention advanced by the learned counsel for the petitioner minutely, we are of the view that the reliance by the petitioner on the experience certificate extracted herein above, is inconsequential. A perusal of the order passed by the Central Administrative Tribunal reveals the recording of a finding of fact, namely, that the Selection Committee during the course of selection of the petitioner

clearly recorded in its proceedings, that the petitioner did not have any experience in Poultry Farming. This factual position has been recorded in paragraph 7 of the impugned order passed by the Central Administrative Tribunal. In view of the aforesaid factual position depicted in the order passed by the Central Administrative Tribunal, it clearly emerges that the petitioner had not attached any experience certificate along with the application form submitted by him nor did he produce any such experience certificate during the course of the process of selection. The only question to be adjudicated upon is, whether the certificate now produced by the petitioner depicting his experience at a private poultry farm for a period of one year, can be accepted so as to vest eligibility to the petitioner for the appointment against the post of Poultry Attendant. We are of the view that a certificate of the nature now produced and relied upon by the petitioner, cannot be relied upon so as to vest eligibility to him. Such a certificate can be obtained easily. Had the petitioner actually possessed the prescribed experience, which he alleges to have acquired at Ajay Poultry Farm, on the basis the experience certificate placed on the record of this case as Annexure P-6/T, he would have most definitely attached the same with the application form submitted by him. He would not also produced it before the Selection Committee at the time of the selection process. But he did not do so. We are of the view that it is too late now for the petitioner to produce any experience certificate so as to establish his eligibility for appointment against the post of Poultry Attendant. The certificate produced by the petitioner from a private poultry farm is certainly not reliable, and cannot be accepted at this stage. In any case, if the petitioner had the certificate placed on record of this case (Annexure P-6/T) which was issued on 1.1.1998, he

would have definitely appended the same with his application form, which was submitted well after the receipt of the aforesaid certificate. In the alternative, he would definitely furnished the said certificate to the Selection Committee at the time of his interview. Having not done so at the appropriate time, leads us to conclude that the petitioner should be denied the right of relying on the same after the process of the selection was completed as its genuineness is shrouded in suspicion. In view of the above, we affirm the finding recorded by the Central Administrative Tribunal, that the petitioner was ineligible for selection and appointment against the post of Poultry Attendant.

Insofar as the second contention is concerned, namely, whether the petitioner can be treated as a physically handicapped candidate, reliance has been placed by the Central Administrative Tribunal on the policy instructions issued by the Government of India dated 4.5.1990. It is not a matter of dispute that under the aforesaid policy instructions, a candidate must have a defect or deformity to the extent of 40% so as to be eligible to claim reservation as a physically handicapped candidate. Admittedly, the handicap of the petitioner is only to the extent of 18%. It is, therefore, that the Central Administrative Tribunal did not accept the claim of the petitioner. Be that as it may, during the course of arguments before this Court, learned counsel for the petitioner has invited our attention to a certificate issued by a Medical Board at Hamirpur declaring that the petitioner has a permanent disability of 18%. The aforesaid certificate has been placed on record of this case as Annexure P-5. Based on the said certificate, learned counsel for the petitioner vehemently contends, that there is no jurisdiction whatsoever at the hands of the authority not to treat the

petitioner as a handicapped candidate. We have examined the aforesaid contention of the learned counsel for the petitioner. It is, however, not possible for us to accept the same. The certificate placed of this case (Annexure P-5) only establishes that the petitioner has a permanent disability of 18%. This factual position has not been disputed either by the respondents or by the Central Administrative Tribunal, in its order dated 4.5.2000. In other words, the matter pertaining to the disability of the petitioner has been examined by treating the disability certificate produced by the petitioner as valid. Even if the disability certificate of the petitioner is valid, it only demonstrates that he has a permanent disability of 18%, whereas, for the purpose of reservation as a disabled / handicapped candidate, a person must have a disability of at least 40%, in terms of the policy instructions dated 4.5.1990. Since the petitioner as per the certificate relied upon by him, does not suffer disability of 40%, we are of the view that the finding recorded by the Central Administrative Tribunal on the instant issue also has to be affirmed.

For the reasons recorded above, we find no merit in this petition and the same is, accordingly, dismissed.

(J.S. Khehar)
Judge

August 30, 2006
vkd

(S.D. Anand)
Judge